

THE HONOURABLE SHRI JUSTICE K.C. BHANU

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WRIT PETITION NO.13052 OF 2005

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DATED THIS THE 16TH DAY OF AUGUST, 2005.

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Between:

Major M.J. Naidu S/o Late M.B. Naidu,

Aged 55 years R/o Sainikpuri,

Secunderabad.

...Petitioner

And

Union of India, Ministry of Defence,

Represented by its Secretary, New Delhi

and others.

...Respondents.

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ORAL ORDER:

This writ petition is filed seeking a writ in the nature of Mandamus or any other order or direction declaring the proceedings issued by the 2nd respondent, as illegal, arbitrary, discriminatory and unconstitutional and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

The petitioner joined in the Indian Army as Other Ranks (OR) in Army Medical Corps on 5.1.1970 and commissioned as an Officer in Army Medical Corps on 5.7.1985. During his 35 years of reckonable service in the Indian Army he never requested for any compassionate posting except the one on 8.12.2002 made on the grounds of medical and children education, which request was considered and orders were issued posting him to Military Hospital, Trimulgherry (Secunderabad) for a period of two years. On receipt of the orders of transfer he joined in the above said hospital on 12.6.2003 and working in the said post to the utmost satisfaction of his superiors. While so, on 5.7.2004, he was transferred from the said hospital. Having exhausted all of his remedies available in the Army for cancellation of the transfer orders dt. 5.7.2004 he approached this Court by filing WP No.20045 of 2004, which petition was allowed on 10.12.2004. Aggrieved by the same, the respondents preferred WA No.871 of 2005 which was disposed of by the Division Bench on 26.4.2005 and as his tenure of two years was coming to an end at the Military Hospital, Secunderabad, the Division Bench did not interfere with the orders of the Learned Single Judge. Thereafter he made a request to the 2nd respondent on 4.5.2005 on the ground that he would be retiring from service in June, 2006, and that this is the last lap of his service in the Armed Services as also on the grounds of ill-health of his wife and daughter, who need his presence. Pending consideration of his representation, the impugned order was issued cancelling his earlier posting and posting him to Military Hospital, Fathegarh, as Administrative Officer directing him to take charge of the same on 25.6.2005. It is the case of the petitioner that he is eligible for promotion to the rank of Lt.Col. from Major which he is due to get in the

month of July, 2005, and that the Military Hospital at Secunderabad is a 490 bedded, whereas the Military Hospital, Fathegarh is a 116 bedded Hospital and it is like demoting him from higher cadre to a lower cadre when he is due for promotion in a few days. It is his further case that one Major M. Achuthan, a batch-mate of him, who came to the Military Hospital, Secunderabad from 164 bedded Military Hospital on compassionate grounds vide order dt.26.2.2002 is still continuing in the said post, even after completing three years tenure. He is being harassed at the instance of the 3rd respondent, who bore grudge against him for misplacement of Prasadam offered to Lord Shiva at Srisailam by the wife of the 3rd respondent and as such there is a mala fide intention behind the issuance of the impugned order by the respondents. In those circumstances he seeks to declare the impugned proceedings as illegal, suspend the operation of the same and award costs.

The learned counsel appearing for the petitioner contended that the impugned proceedings of transfer are arbitrary and contrary to the policy guidelines issued by the respondents and he further contended that it is a case of victimization in view of the fact that the 3rd respondent developed grouse against the writ petitioner. He also contended that the proceedings of transfer is like imposing punishment since the cadre was degraded in transferring the petitioner to a hospital which is manned by a Captain. He further contended that the petitioner is going to retire within ten months from to-day and that his case has been discriminated, in view of the fact that the persons who have already completed three years on compassionate grounds were remained at Secunderabad. He also contended that the exchequer of the respondents will be saved in retaining him at Secunderabad.

On the other hand the learned Assistant Solicitor General for the respondents contended that as the transfer guidelines issued by the respondents are only an internal arrangement, the petitioner cannot have any right to enforce those guidelines, that after completion of two years on compassionate grounds and as per the directions of the Division Bench of this Court he was transferred to Fatlhegarh and that there was no demotion, as such, to the petitioner in view of the service conditions, pay particulars etc., and that there are no grounds to interfere with the proceedings under challenge.

There cannot be any dispute that the transfer not only is an incidence of service but is also one of the service conditions. An employee cannot claim any right

to remain at a particular place, unless the transfer is made by way of punishment or contrary to the rules governing the service conditions of transfer or by arbitrary exercise of power. In transfer matters, normally, this Court will not interfere. The learned counsel for the petitioner contended that when the 3rd respondent visited Srisailam the writ petitioner attended on him and the Prasad of the 3rd respondent has been lost and, therefore, the 3rd respondent developed grouse against the writ petitioner in effecting the transfer. But according to the learned Assistant Solicitor General for the respondents, the 3rd respondent retired from service on 30.4.2005 before the present impugned order and, therefore, in view of such fact the contention that the petitioner was transferred at the behest of the 3rd respondent cannot be entertained. Even otherwise, the mala fides cannot be said to be a ground for the transfer of an employee. The petitioner has not shown any statutory rule which has been violated in effecting his transfer. Certain guidelines have been framed by the respondents where under a person in the rank of Quarter Master can be transferred to 150-199 bedded hospital.

The grievance of the petitioner is that he was transferred to Fathegarh which is a 100-149 bedded hospital for which a person in the cadre of Captain can be posted and, therefore, it is a demotion. Even these instructions given by the respondents are only internal arrangements to the Officers, for their guidance in effecting transfers. These internal correspondence cannot have any statutory force and confer any right on the petitioner to remain at a particular place. Admittedly, as on to-day the two years compassionate appointment has been completed by the petitioner at Secunderabad. Therefore, the petitioner is bound by the transfer orders. By virtue of this transfer order the pay particulars and the service conditions of the petitioner have not been affected in any way. It is also contended that the cases of similarly situated persons have been considered by the respondents and they were ordered to remain at the place where they were working for more than three years. The same is rebutted by the Counsel for the respondents. Even assuming for a moment that there is a discrimination in allowing some other persons at a particular place for more than three years, the same cannot be a ground for the petitioner for his retention at Secunderabad.

Therefore, I am of the considered opinion that the proceedings of transfer has not been vitiated by any mala fides or contrary to the rules governing the transfer

orders or by way of punishment. In the absence of these, the writ petition is devoid of merits, which is accordingly dismissed.

Dst.16.08.2005 K.C. BHANU, J

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